

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2009-300-C - ORDER NO. 2009-
November ____, 2009

IN RE: Application of LMK Communications, LLC)
for a Certificate of Public Convenience and)
Necessity to Provide Interexchange and)
Local Exchange Telecommunications Services)
and for Local Service Offerings to be)
Regulated in Accordance with Procedures)
Authorized for NewSouth Communications)
in Order No 98-165 in Docket No. 97-467-C;))
and for Interexchange Service Offerings)
to be Regulated in Accordance with)
Procedures Established for Alternative)
Regulation in Order Nos. 95-1734 and)
96-55 in Docket No. 95-661-C)

**ORDER
GRANTING
CERTIFICATE**

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of LMK Communications, LLC ("LMK" or the "Company") for authority to provide local exchange and interexchange telecommunications services within the State of South Carolina (the "Certification Application").

Further, the Company requests that the Commission regulate its local retail telecommunications services in accordance with the principles and procedures established for flexible regulation in Order No. 98-165 in Docket No. 97-467-C. In addition, the Company requests that the Commission regulate its business interexchange service offerings under modified alternative regulation.

The Company's Application was filed pursuant to S.C. Code Ann. Section 58-9-280, S.C. Code Ann. Section 58-9-585 and the Rules and Regulations of the Commission. By letter, the Commission instructed the Applicant to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The

purpose of the Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in this proceeding. The Company complied with this instruction and provided the Commission with proof of publication of the Notice of Filing.

A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC"). Subsequently, counsel for SCTC filed with the Commission a Stipulation. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to the Company provided the conditions contained in the Stipulation are met. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on October 26, 2009, at 11:30 a.m. before David Butler, Esquire, Hearing Examiner. Scott Elliott, Esquire, represented the Company. Jeff Nelson, Esquire, represented the Office of Regulatory Staff. At the outset of the hearing, the Applicant and the ORS entered a Settlement Agreement into the record attached hereto as Order Exhibit 2. Jennifer Menge, Assistant Secretary and Assistant Treasurer of the Applicant, appeared and testified in support of the Application.

According to the record, LMK is a North Carolina Corporation. Ms. Menge testified that the Applicant is certificated to provide telecommunications services in North Carolina and Virginia. The Applicant has received authority from the South Carolina Secretary of State to transact business within the State of South Carolina. According to Ms. Menge, LMK will provide resold and facilities-based local exchange telecommunications services and interexchange telecommunications services. The Applicant's services will be marketed and provided primarily to residential and business customers and will offer such services on a twenty-four (24) hour a day, seven (7) day a week basis. Ms. Menge further testified regarding the managerial experience of the Company's executives as well as the financial status of the Company. Ms. Menge also testified that the Company had substantial financial resources to ensure the viability of the Company. Both a resume of the key personnel and senior management and recent financial reports of the Company were

submitted into the record.

Ms. Menge finally testified that granting LMK's Application will introduce a telecommunications service provider committed to providing high-quality, innovative, and technologically advanced services that will further increase telecommunications competition in the State of South Carolina. She opined that the Commission's granting of the Application is therefore in the public interest.

Ms. Menge asserted that the Company will operate in compliance with all applicable statutes, regulations, and Commission orders. Further, Ms. Menge testified that LMK has never had authority denied in any state where it has applied for authority nor has the company had authority revoked in any state where it has been granted authority. Ms. Menge stated that the Company will abide by all applicable Commission rules, regulations and Orders upon the Company receiving certification to provide intrastate interexchange and local exchange telecommunications services in South Carolina.

Ms. Menge also discussed the Company's request for certain waivers of Commission regulations. The Company requests that it be exempt from any rules or regulations that would require it to keep financial records in conformance with the Uniform System of Accounts ("USOA"). Additionally, the Company seeks a waiver of 26 S.C. Code Ann. Regs. 103-631 so that it will not be required to publish local exchange directories. The Company will contract with at least one incumbent local exchange carrier (or its directory publishing affiliate) for the inclusion of the Company's CLEC customer base into the master customer database of the local exchange carrier. At the hearing, Ms. Menge also requested that the Company be granted a waiver of 26 S.C. Code Ann. Regs. 103-610 so that the Company is permitted to maintain its records outside of South Carolina. The Company wishes to maintain its books and records in its principal place of business located in North Carolina.

After full consideration of the applicable law, the Company's Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Company is a duly organized corporation which exists under the laws of the State of North Carolina and has been authorized to do business in the State of South Carolina by the Secretary of State.
2. The Company is a provider of local exchange and interexchange telecommunications services and wishes to provide its services in South Carolina. The Company is not providing prepaid local exchange services at this time; prior to offering such services the Company has agreed to comply with the Commission's bond requirements.
3. The Company has the managerial, technical, and financial resources to provide the services as described in its Application. S.C. Code Ann. Section 58-9-280 (B)(1)
4. The Commission finds that the Company's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. Section 58-9-280 (B)(3).
5. The Commission finds that the Company will support universally available telephone service at affordable rates. S.C. Code Ann. Section 58-9-280 (B)(4).
6. The Commission finds that the services to be provided by the Company will meet the service standards of the Commission. S.C. Code Ann. Section 58-9-280 (B)(2).
7. The Commission finds that the provision of local exchange service by the Company "does not otherwise adversely impact the public interest" S.C. Code Ann. Section 58-9-280 (B)(5).
8. Following execution of the Stipulation with the SCTC, the SCTC withdrew its opposition to the Application.
9. The Settlement Agreement between the Company and the ORS is fair and reasonable and in the public interest.

CONCLUSIONS OF LAW

1. The Commission concludes that the Company possesses the managerial, technical, and financial resources to provide the competitive local exchange and interexchange telecommunications services as described in the Application.

2. The Commission concludes that the Company's "provision of service will not adversely impact the availability of affordable local exchange service."

3. The Commission concludes that the Company will participate in the support of universally available telephone service at affordable rates to the extent that the Company may be required to do so by the Commission.

4. The Commission concludes that the Company will provide services that will meet the service standards of the Commission.

5. The Commission concludes that the provision of local exchange services by the Company will not otherwise adversely impact the public interest.

6. Based on the above findings of fact and conclusions of law, the Commission determines that a statewide Certificate of Public Convenience and Necessity should be granted to the Company to provide competitive local exchange services. The terms of the Stipulation between the Company and SCTC are approved and adopted as a part of this Order. Any proposal to provide local telecommunications service to rural service areas is therefore subject to the terms of the Stipulation. In addition, the Company is granted authority to provide interexchange telecommunications service through the resale of services offered by other carriers approved by the Commission.

7. The Commission concludes the Company's local exchange telecommunications services shall be regulated in accordance with the principles and procedures established for flexible regulation first granted to NewSouth Communications by Order No. 98-165 in Docket No. 97-467-C. Specifically, the Commission adopts for the Company's competitive intrastate local exchange services a rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels that will have been previously approved by the Commission. Further, the Company's local exchange service tariff filings are presumed valid upon filing, subject to the Commission's right within thirty (30) days to institute an investigation of the tariff filing, in which case the tariff filing would be suspended pending further Order of the Commission. Further, any such

tariff filings will be subject to the same monitoring process as similarly situated competitive local exchange carriers.

8. The Commission adopts a rate design for the long distance services of the Company consistent with the principles and procedures established for alternative regulation of business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C and modified by Order No. 2001-997.

9. Under the Commission approved modified alternative regulation, the business service offerings of the Company, including consumer card services and operator services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain "operator-assisted calls" where a customer uses an incumbent local exchange carrier's calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to the Company also.

10. With regard to the residential interexchange service offerings of the Company, the Commission adopts a rate design that includes only maximum rate levels for each tariff charge. The Commission has previously adopted a rate structure incorporating maximum rate levels. In Re: Application of GTE Sprint Communications Corporation, etc. Order No. 84-622, issued in Docket No. 1984-10-C (August 2, 1984).

11. With regard to residential interexchange service rates, the Company shall not adjust its residential interexchange service rates below the approved maximum levels without notice to the Commission and to the public. The Company shall file its proposed rate changes, publish notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances that do not affect the general body of subscribers or do not constitute a general rate reduction, In Re: Application of GTE Sprint Communications, etc. Order No. 93-638, issued in Docket No. 1984-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540.

12. We conclude that the Applicant's request for waiver of 26 S.C. Code Ann. Regs. 103-610 should be granted, since strict compliance with the regulation potentially causes undue hardship on the Company. We also grant exemption from the policies requiring the use of USOA. In addition, we grant waiver of 26 S.C. Code Ann. Regs. 103-631, which requires publication of a local telephone directory. Last, we grant a waiver of 26 S.C. Code Ann. Regs. 103-612.2.3, which requires filing a map of the service territory.

13. The Settlement Agreement between ORS and LMK is approved.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. A Certificate of Public Convenience and Necessity is granted to LMK Communications, LLC to provide competitive local exchange and interexchange telecommunications services.

2. The terms of the Stipulation between the Company and the SCTC is approved and adopted as part of this Order. The Stipulation is attached as Order Exhibit I. Any proposal to provide competitive local exchange telecommunications services to rural service areas is subject to the terms of the Stipulation.

3. The Company shall file, if it has not already done so by the date of issuance of this Order, its revised local and long distance tariffs. The revised tariffs should be electronically filed in a test searchable PDF format using the Commission's DMS System (<http://dms.psc.sc.gov>). An additional copy should be sent via email to etariff@psc.sc.gov to be included in the Commission's ETariff System (<http://etariff.psc.sc.gov>). Future revisions to the tariffs should be made using the ETariff System. The revised tariffs shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations, and shall be filed as stated within 30 days of receipt of this Order.

4. The Company is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that, for access charge purposes, resellers should be treated similarly to facilities-based interexchange carriers.

5. With regard to the Company interexchange services, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

6. To the extent the Company resells interexchange services, the Company shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If the Company changes underlying carriers, it shall notify the Commission in writing.

7. With regard to the origination and termination of toll calls within the same LATA, the Company shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 1992-182-C, 1992-183-C, and 1992-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission ("FCC"), pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, the Company shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

8. LMK is required to comply with Title 23, Chapter 47, South Carolina Code of

Laws Annotated which governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a 911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs the Company to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate authorities is to be made before Providing voice or dial tone telephone service in South Carolina. Accompanying this Order is a memo from the State 911 Office at the Office of Research & Statistics of the South Carolina Budget and Control Board. This memo provides information about contacting County 911 Coordinators. By this Order and prior to providing voice or dial-tone services within South Carolina, the Applicant is directed to contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

9. The Applicant shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of South Carolina specific information. Therefore, the Company shall keep financial records on its South Carolina operations to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website or at the ORS's website at www.regulatorystaff.sc.gov. The title of this form is "Telecommunications Company Annual Report." This form shall be utilized by the Applicant to file annual financial information as directed by the Commission or ORS and shall be filed no later than April 1st.

Commission gross receipts forms are due to be filed no later than August 31st of each year. The proper form for filing gross receipts information can be found at the ORS website www.regulatorystaff.sc.gov and the appropriate form is entitled "Gross Receipts Form."

Each telecommunications company certified in South Carolina is required to file annually with the ORS the South Carolina Universal Service Fund (“USF”) Contribution Worksheet, which may be found on the ORS’s website at www.regulatorystaff.sc.gov. This worksheet provides ORS information required to determine each telecommunications company’s liability to the State USF fund. The State USF worksheet is due to be filed annually no later than July 1st with the ORS.

10. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission and ORS in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. The Company shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the ORS website at www.regulatorystaff.sc.gov, this form shall be utilized for the provision of this information to the Commission and ORS. Further, the Company shall promptly notify the Commission and ORS in writing if the representatives are replaced. If the company changes or modifies its name, the Company shall file such changes with the Commission for approval.

11. The Company shall conduct its businesses in compliance with Commission decisions and Orders, both past and future.

12. By its Application, the Company requested a waiver of 26 S.C. Code Ann. Regs. 103-631. The Commission finds the Company's requests reasonable and grants the requested waiver of the application of 26 S.C. Code Ann. Regs. 103-631. Further, the Company is granted a waiver of 26 S.C. Ann. Regs. 103-610 requiring the Company to maintain its financial books and records within the State of South Carolina. However, as a condition of being granted a waiver of the requirement to maintain corporate books and records

within the State Of South Carolina the Company shall make such books and records available. at the Company's expense, to the Office of Regulatory Staff upon request. Further, the Company is granted a waiver of the requirement that books and records be maintained in accordance with the Uniform Systems of Accounts ("USOA"). Last, the Commission grants the Applicant's request for the waiver of the requirement that it file a map of its service territory as required by 26 S.C. Code Ann. Regs. 103-612.2.3. The Company is directed to comply with all Rules and Regulations of the Commission, unless the Commission specifically waives compliance with a regulation.

13. The Settlement Agreement between LKM and ORS is hereby approved.

14. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

Elizabeth B. Fleming,
Chairman

ATTEST:

John E. Howard, Vice Chairman
(SEAL)